

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEROME MERRIWEATHER,

Defendant.

Case No. 15-cr-40046-JPG-006

MEMORANDUM AND ORDER

This matter comes before the Court on defendant Jerome Merriweather's "Motion for Reconsideration" (Doc. 383) of the Court's previous sealed order (Doc. 329) denying his amended motion for compassionate release pursuant to the First Step Act of 2018, Pub. L. No. 115-391, § 603(b)(1), 132 Stat. 5194, 5239 (2018) (codified at 18 U.S.C. § 3582(c)(1)(A)) (Docs. 315 & 328). The Court construes this as a new motion for compassionate release rather than an attempt to revive his previous motion. Merriweather appealed the Court's prior ruling, and the Court of Appeals affirmed that ruling. *See United States v. Merriweather*, No. 20-3503, 2022 WL 1449183 (7th Cir. May 9, 2022). At that point, his motion had run its course. In the pending motion, Merriweather advances new arguments that were not presented in his prior motion, so this is a new effort to obtain compassionate release. Construing this is a new motion is therefore appropriate.

A new motion requires new exhaustion. Before moving for compassionate release in a United States District Court, a defendant must either (1) "fully exhaust[] all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf," or (2) wait "30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier."

Merriweather does not allege that he followed either route to exhaustion. The Court therefore

ORDERS that Merriweather shall have 30 days to supplement his motion with evidence that he satisfied the exhaustion requirement *before* he filed his motion. If he either fails to respond within 30

days or fails to present evidence that he satisfied the exhaustion requirement before filing his motion, then the Court will offer the Government a chance to assert exhaustion as an affirmative defense before moving forward with the merits of Merriweather's motion.

IT IS SO ORDERED.

DATED: September 25, 2023

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE